



Appeal Decision

Site visit made on 18 October 2023

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 November 2023

Appeal Ref: APP/N5660/W/22/3313674

Land to the rear of 55-161 Auckland Hill, London SE27 9PG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Richard Keys (Places ByOthers Limited) against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 21/04709/FUL, dated 3 December 2021, was refused by notice dated 24 June 2022.
 - The development proposed is Redevelopment of the site, involving the erection of 9 two storey dwellinghouses, including provision of refuse/cycle storage, landscaping and replacement of the front gate.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application form did not include a description of the development proposed. Therefore, in the banner heading above, I have taken the description from that provided on both the appeal form and the Council's decision notice.

Main Issues

3. The main issues are:
 - Whether the proposed development would affect open space and, if so, the effects that would be wrought by this;
 - Whether the house sizes and types proposed are appropriate;
 - Whether appropriate living conditions would be provided for the future occupiers of the proposed development with particular reference to privacy;
 - The effects of the proposed development upon the living conditions of the occupiers of 157 Auckland Hill, with particular regard to their privacy; and
 - The parking and access arrangements.

Reasons

Open space

4. The Council's first reason for refusal refers to Policy EN1 of the Lambeth Local Plan (LLP), Policy GG2 of the London Plan (LP) and paragraph 99 of the National Planning Policy Framework (the Framework). These development plan

policies and, this paragraph within the Framework, each refer to open space. Through a combination of their glossaries or policy justification, the development plan and the Framework define open space.

5. Each definition exhibits some differences. The examples of open space provided within the Policy EN1 definition is not exhaustive, the LP definition relates to a broad range of predominantly undeveloped land even if it is privately owned with no public access, whilst the Framework's definition refers to open space of public value and includes that which acts as a visual amenity. Consequently, none of the definitions are particularly restrictive and a wide range of spaces can, in the light of them, be properly considered as open space.
6. There are remnants of hard surfaces underfoot but, the appeal site is generally covered by low level plants and moss. It also contains some taller plants and trees. On its boundaries there are means of enclosure and further plants. Even if in the past the site has contained buildings, given its current character and appearance, it is now undeveloped. Clearance within the appeal site has previously taken place and so, up until quite recently, it will have been more heavily planted than at present.
7. The appeal site may not be identified within the Open Space Strategy Addenda 2013 or within a draft site allocations document. However, identification within these documents is not a proviso of any of the open space definitions I have referred to above. Therefore, that the appeal site is not referenced or recognised within such documents does not mean that it is not open space.
8. The appeal site is positioned between the residential properties on Auckland Hill and a railway line. Doubtless the site has suffered from some fly tipping and invasive plants. I accept that an outcome of this would have been some detraction in its appearance. Even so, the appeal site forms a buffer strip of landscaped land between the residential properties and the railway line. For this reason alone and, regardless of whether it has served other purposes or whether individuals had the ability or right to access and use it for those other purposes, the appeal site constitutes open space having regard to the development plan and Framework definitions. The appeal site may not positively contribute in all respects – for instance, I have no substantive evidence that it contributes to air quality and there will be other open spaces of more value. Even so, some public value is derived from its landscaped buffer purpose.
9. Elements of the design of the proposed development would have merit, the houses would be suitably landscaped and wildlife friendly planting and habitat provision would be made. Nevertheless, in the proposal, open space would be lost and not adequately replaced. I have identified the purpose and value of the open space as a parcel of landscaped buffer and, I have no compelling evidence before me that it is surplus to requirements.
10. The registration of assets of community value is a separate process to that of applying for planning permission. Having regard to the definitions within the development plan and the Framework, that the nomination for the appeal site to be registered failed does not mean that it does not constitute open space. The evidence before me also provides me with no compelling reasons to conclude that considering the site as such would be unjustified or inappropriate.

11. The reasons why the Council considered the application sites at Leigham Court Road and West Norwood Lawn Tennis Club constituted open space has no bearing on the appeal case. The appeal site can constitute open space for different reasons. It may also be the case that not every parcel of undeveloped land within Lambeth will constitute open space but, for the reasons given above, I have concluded that the appeal site does.
12. The open space that forms the appeal site would be lost in the proposal and, in so doing, the value of it as a largely landscaped buffer adjacent to Auckland Hill would be harmed and removed. The proposed development would, therefore, conflict with Policy EN1 of the LLP and Policy GG2 of the LP which, amongst other matters, seek to protect and maintain open spaces. There would be conflict with paragraph 99 of the Framework too which also seeks to protect open space unless certain circumstances apply.
13. In coming to this view, I acknowledge that not all undeveloped land should be protected from development but, I have nevertheless identified harm and development plan policy conflict in this case. I acknowledge that Policy GG2 relates to matters other than protecting open space. However, in this main issue I have identified that harm would be wrought by reason of open space being lost. I identify other harms in other main issues. Accordingly, the proposed development would not make the best use of land which Policy GG2 seeks. The Council have not referred to Policy G4 of the LP within its refusal reasons. Regardless, for the above reasons I have identified other development plan policy conflicts. I present my conclusions on the development as a whole later in my decision.

House size and type

14. Each of the 9 houses proposed would be 3 bedroomed. Given this, although there would be some differences in their layout, each house would be of a very similar type and be of the same occupancy level. Therefore, the proposed development would not deliver houses of a varied type or size. Though each policy does exhibit some flexibility and make it clear that family housing is needed, it is nevertheless the case that both Policy H10 of the LP and Policy H4 of the LLP support a range of dwelling sizes within development. The proposal would not achieve this. Amongst other matters, a range of dwelling types and sizes helps to ensure mixed and balanced communities whilst an appropriate mix of houses is likely to be one which addresses local housing type requirements.
15. It is put to me that the house type and size proposed is the optimised design response to the site and its constraints, including its shape and the appearance of other properties in the area. However, I have very little evidence before me which indicates what other design iterations may have been considered and discounted. Overall, the evidence that only a scheme of the house size and type proposed would be achievable at the site is not compelling.
16. There may be a quite high proportion of flats within the surroundings of the appeal site and, I accept that the type of housing proposed would, to an extent, address the family housing need within London. However, the evidence before me indicates that within Lambeth itself the requirement for 3 bedroomed units is quite low. I have had no robust submissions made which provide me with reasons to conclude otherwise.

17. In the development at Leigham Court Road only one bedroomed homes were proposed. However, I particularly note that each were proposed to be affordable. In that scheme the Council acknowledged that the mix of homes proposed conflicted with a development plan policy but, in its planning balance, the Council concluded that the development was still acceptable. As a part of this, the Council gave weight to the contribution to affordable housing that the scheme would make and the particular housing model involved. These matters distinguish the Leigham Court Road scheme from the appeal proposal. Therefore, that scheme does not weigh in favour of the appeal proposals to any meaningful extent.
18. Overall, the evidence before me does not demonstrate that there are individual site circumstances, constraints or particular contexts which justify the development only delivering houses of such similar size and type. I therefore find that the house sizes and types proposed are inappropriate, contrary to Policy H10 of the LP and Policy H4 of the LLP. These policies support those developments which would deliver an appropriate housing mix and which would meet housing needs having regard to a range of factors. In coming to this view, I acknowledge that the development seeks to provide accessible and suitably adaptable dwellings.

The living conditions of future occupiers

19. The appeal site is within an urban location and, owing to the number of terraced properties and flats within the area, there is a quite dense built form. Even so, many properties in the area are served by quite spacious plots and many properties have a front garden/yard providing some separation from footpaths.
20. The properties on Auckland Hill which back onto the appeal site are quite reflective of this character – they too are served by smaller front and larger rear gardens. No residential properties are presently to their rear or thereby overlook these Auckland Hill terraces. They do, however, contain several storeys of accommodation, upper storey external terraced areas and windows that face in different directions. There is, therefore, some mutual overlooking between these properties. Despite this and the site's urban setting, given the general separation that exists between properties and from windows to the highway, many existing occupiers will benefit from quite high levels of privacy.
21. On the southern side of the proposed houses, a communal walkway is proposed. The walkway would be right next to the first floor of the houses. No garden or yard is proposed to provide separation from the windows adjacent to it that would serve living, dining and kitchen accommodation. Views into these spaces within the houses would be readily available from the walkway and infringe upon privacy. These effects would be greater for those houses closer to the start of the walkway as there would be more passers-by.
22. The existing railway line is located opposite the appeal site to this same side of the proposed houses. As well as the living, dining and kitchen accommodation, on the ground floor, windows serving the bedrooms of the proposed houses would be opposite the railway line. There would be some trees and plants on land between the houses and the railway line. Nevertheless, the railway line would be quite close to the proposed houses and, it was noticeable during my site visit that in some stretches the existing landscaping thins out considerably.

It was also noticeable how frequently trains were passing the site during my visit.

23. Landscaping may grow back on this intervening land but, this would be likely to take a considerable time to mature and it has not been shown to me that an effective landscaped screen would be provided. Fencing proposed would also not form a comprehensive screen. Features such as blinds or shutters could be utilised by future occupiers to increase their privacy, however, the reliance on such features would not represent good design. I acknowledge that at times trains will pass at speed but, it has not been shown to me that there would not be other times when they would be travelling more slowly. Given their proximity and frequency, I find that the passing trains would also result in some infringement upon the privacy of the future occupiers of the development. Any workers undertaking maintenance along the railway line would to some extent also cause some infringement, although I expect that such instances would be quite infrequent.
24. On the opposite side of the proposed development the landscaped gardens of the existing Auckland Hill properties and those proposed would abut, they would be divided by enclosures and, a separation of between 15m and 18m would be provided between the existing and proposed properties. However, the Auckland Hill properties contain several floors of accommodation and the rear elevation of the terrace contains many windows as well as upper storey external terraces. Therefore, the proposed plots and the bedroom, living and dining accommodation on this side of the proposed houses would be overlooked from different spaces and floors. The effects would be greater for the first floor of the proposed houses given the more acute viewing angles towards the lower ground floor. Consequently, even though the 15m-18m separation distance may be quite typical within an urban context, in these particular circumstances, the degree of overlooking would be invasive.
25. Internal and external space standards may be achieved but adequately sized spaces only make a contribution towards overall living conditions and they would not serve to mitigate the harmful overlooking I have identified. In the Leigham Court Road development shorter separation distances may have been accepted by the Council than would be the case here. However, I have formed my own view, based on the evidence before me and taking account of the particular site circumstances. Therefore, that the Council have approved a development on a different site with shorter separation between buildings is of limited weight in my decision.
26. Therefore, I have identified various reasons why the future occupiers of the proposed development would have their privacy infringed upon. These different effects would be experienced in different parts of the proposed houses and their plots and the effects would combine. Consequently, the future occupiers of the proposed development would be provided with inadequate living conditions with particular regard to their levels of privacy which would be divergent from that which prevails in the area. I have taken into account the views expressed by Conservation and Urban Design and Network Rail but, for the reasons I have set out above, I have identified unacceptable effects.
27. The proposed development would therefore conflict with Policy Q2 of the LLP which sets out, amongst other matters, that development will be supported which provides acceptable standards of privacy. The Council raise some other

matters relating to the living conditions of future occupiers. However, the Council's reasons for refusal do not reference these matters. Therefore, I have not addressed them in this main issue and regardless, unacceptable living conditions would be provided for, given my findings on privacy.

The living conditions of 157 Auckland Hill

28. 157 Auckland Hill (No 157) is a lower floor property within the end terrace that is positioned adjacent to the site access. No 157 is served by a window to a living room in its front elevation, windows to bedroom, kitchen and bathroom in its rear elevation and windows to a further bedroom and the same kitchen in its side elevation. The proposed access for the vehicles, pedestrians and cyclists of the development would run past No 157 and the windows to the 2 bedrooms and the side elevation kitchen window would be the closest to it. The land levels are such that the access would slope uphill towards the main road and would be elevated where adjacent to No 157.
29. As a route running past windows there are some similarities with the communal walkway that would serve the proposed development which I have addressed in the previous living conditions main issue. Unlike would be the case with the communal walkway, however, a fence, albeit not an especially high one, would be positioned between the access route and the adjacent windows within No 157. The windows within the side elevation of No 157 are set slightly back from the common boundary with the appeal site.
30. The access from the road would be much wider than the communal walkway. Although the appellant has indicated that a pedestrian zone could be demarcated within it, it is also proposed that the access would be a shared surface and would not be served by a standard pavement. Conceivably, pedestrians and cyclists could travel up and down the access some distance away from the common boundary with No 157.
31. Therefore, in the proposal, there would be both an intervening feature and some separation between the access route, its users and the windows. This would differ from the relationship that the communal walkway and the proposed houses would have.
32. During my visit, I noted at the front of No 157 the garden boundary wall is only low and where it travels past this garden the highway is elevated above some of the living room window. At the time of my visit, I noted that the living room blinds/curtains were drawn but, had they not been, a quite clear view from the pavement over the garden wall and into the room would have been available. Therefore, that highway users have views towards accommodation within No 157 already subsists.
33. Given the prevailing conditions and, given some of the mitigation that the proposed design would provide, the effects of the proposed development upon the living conditions of the occupiers of 157 Auckland Hill, with particular regard to their privacy, would remain acceptable. In these specific respects, there would be no conflict with Policy Q2 of the LLP.
34. Although other matters of concern in respect of the living conditions of both No 157 and other properties are submitted to me within the evidence, the Council's reasons for refusal do not reference these matters. Given this and,

given I am dismissing the appeal, it is not necessary for me to consider these other matters further.

Parking and access

35. No controlled parking zone (CPZ) is in operation closely-by to the appeal site. Many properties within the area are not served by driveways and, therefore, those occupants with cars will be required to park on-street. During my site visit I noted that the streets closest to the appeal site were heavily parked with few available spaces. No parking spaces are proposed as part of the development except for a single accessible space which, it is proposed, would be served with an electric vehicle charge point.
36. Reflective of my own observations on site, the submitted parking survey identified that streets within the survey area were heavily parked with an average parking stress of 95%. This is higher than either the 85% or 90% figures which have been put to me as acceptable parking stress thresholds.
37. To accommodate site access for larger vehicles, some double yellow line restrictions on Auckland Hill would be necessary and some space for vehicles to park on the street would be lost as a result. The space lost would accommodate 2 vehicles. Although this is not many spaces, 9 further houses, each 3 bedroomed, would be delivered in conjunction. This would take place in an area with the substantial parking pressures identified.
38. I acknowledge that the appeal site is located within quite an accessible location with a Transport for London Public Transport Access Level (PTAL) of 4. I also acknowledge that Policy T6 of the LP states that car-free development should be the starting point for all development proposals in places that are (or are planned to be) well-connected by public transport. Policy T6 further explains that an absence of local on-street parking controls should not be a barrier to new development and, the appellant has submitted to me their willingness to enter into a section 106 legal agreement to, amongst other matters, provide a financial contribution towards the introduction of a CPZ.
39. However, I have no substantive evidence before me on the certainty of the delivery of a CPZ in the area. Although the development is proposed to be car-free, to deliver this, a mechanism is required to ensure that occupiers of the development would not be eligible to apply for a parking permit within the CPZ operating within the area, unless they were a Blue Badge holder. I have no signed section 106 agreement before me. Without it, even if a CPZ was in force, there is no mechanism to secure that the development would be car-free nor, in turn, prevent the harmful effects that would be caused by an increase in on-street parking pressure. I also cannot attribute any weight to any other intended mitigation that would arise from the section 106 agreement.
40. The appellant has drawn my attention to some other developments which they consider support the appeal proposals in respect of parking matters. The full detail of each case is not before me but I particularly note that in the case of the nearby proposal at 31-37 Auckland Hill on which more detail is provided, the parking stress levels were not identified as being as high as in the appeal proposals whilst I have no reason to conclude that the section 106 agreement referred to in that case was not completed. Therefore, the developments the appellant refers to do not weigh in favour of the appeal proposals to any meaningful extent.

41. Therefore, in the proposal, a further contribution to parking pressures in the area would result which would serve to compound the high degree of parking stress which already prevails. The evidence before me indicates that the local area does not have sufficient on-street parking capacity to cater for the development without unacceptably adverse effects being likely to arise which could include increased incidents of indiscriminate parking to the detriment of highway safety. These effects would be unacceptable even if the residual cumulative impacts of the traffic generated by the development upon the local highway network would not, themselves, be severe.
42. For these reasons, the proposed development would conflict with Policy T1 of the LLP which, amongst other matters, requires development proposals to reduce road dangers and mitigate their transport impacts.
43. Aside from parking, the Council's fifth reason for refusal cites that the proposed development has failed to make adequate provision for servicing and amongst other things cites conflict with Policies T2 and T7 of the LLP. However, in this main issue I have already concluded that the effects of the proposed development upon parking would be unacceptable. I am also dismissing the appeal. Therefore, any finding I may make upon the adequacy or otherwise of the likes of the design of the shared surface access and the provision made for servicing and emergency vehicles would not be decisive. Therefore, it is not necessary for me to address these matters in detail.

Other Matters

44. The development would make a relatively modest but nevertheless valuable contribution to housing supply. As a quite small housing site I have no reason to conclude that the houses would not be delivered relatively quickly too. The boost to housing supply would be a benefit of the appeal scheme. Some economic benefits would be derived from the construction and operational phases of the development.
45. I note that the appeal site is not within a conservation area. It does not contain nor is it very close to listed buildings. Neither does it contain trees protected by virtue of tree preservation orders. The proposed development may provide acceptable cycle parking and bin storage whilst the design has sought to minimise the scheme's embodied carbon and energy consumption. I have no reason to conclude that the development would be the subject of any unacceptable risk of flooding or that it could not be adequately drained. Had I allowed the appeal, planning conditions could have been utilised to ensure other details and impacts were acceptable for example construction management practices. However, the absence of harm in relation to these matters is neutral in the planning balance and does not outweigh the harm I have identified in my main issues. Likewise, even if an acceptable final fire safety strategy for the development was devised, this would at most be a neutral factor in my determination.
46. The appellant refers to the pre-application response of the Council and considers that the Council have been inconsistent in some ways. The appellant also submits that their opportunity to discuss and address all the concerns of the Council during the planning application was restricted. However, I must consider the appeal proposal on its merits and given all the evidence that is now before me. Therefore, the earlier pre-application response and the Council's handling of the planning application are not decisive factors.

Conclusion

47. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise.
48. The proposed development would result in some benefits, including the delivery of housing. In the main issues, I have also identified that the effects of the proposed development upon the living conditions of the occupiers of 157 Auckland Hill would be acceptable. The proposed development would accord with some development plan policies.
49. However, in the remaining main issues I have identified that harm would be wrought by reason of the loss of open space and through a failure to deliver appropriate house sizes and types. I have also identified that there would be a failure to provide appropriate living conditions for future occupiers and the parking effects of the development would be detrimental to highway safety. Consequently, the proposed development would conflict with other development plan policies and the harm would be such that the development would conflict with the development plan taken as a whole. This conflict is not outweighed by other considerations, including the Framework. Therefore, in conclusion, having taken account of the development plan as a whole and all other relevant material considerations, the appeal is dismissed.

H Jones

INSPECTOR